MINUTES

UTAH AIR QUALITY BOARD MEETING

June 2, 2004

I. Call to Order

The Board Chair, John Veranth, called the meeting to order at 1:35 p.m.

Board members present:

John Veranth	Jim Horrocks	Joann Seghini
Jonathan Cherry	Dianne Nielson	Jeff Utley
Jerry Grover	Richard Olson	

Executive Secretary: Richard W. Sprott

II. Dates of upcoming Air Quality Board Meetings:

July 7, 2004; August 4, 2004; September 1, 2004.

III. Approval of the Minutes of March 31, 2004 Board Meeting.

Richard Olson moved to approve the corrected copy of minutes with Mayor Seghini seconding. The motion passed.

IV. Final Adoptions of proposed Amendment to R307-415 Permits: Operating Permit Requirements. Presenter: Tim Andrus

On February 4, the Air Quality Board proposed changes to R307-415 to incorporate changes to re-align the state rule with the federal rules that were promulgated last June 28. A public comment period was held from March 1-31 and staff received only one written comment from UIENC (Utah Industrial Environmental Coalition). Most comments dealt with interpretations of continuous compliance provisions. One comment dealt with a portion of the rule that was deleted by EPA. If EPA reinstates that, then we will propose new rulemaking to reinstate ours also. No proposed changes were made from the public comment. Staff recommends that the Board adopt the rule with changes as proposed.

The Board recognized Mr. Mike Tomko, from UIENC. UIENC supports the rule making to align Title V Compliance Certification with the EPA rule. He pointed out that the public was trying to reach a common understanding of the proper interpretation of what the division requires for compliance certification requirements.

Compliance certification means that an official has to certify to the truth, accuracy and completeness of the source's compliance status. If a source falsely certifies its compliance status, it could be subject to criminal sanction. UIENC comments indicated that it is their belief that the proper interpretation is that if a source has an unavoidable breakdown and reports the unavoidable breakdown, that occurrence would not preclude a company from certifying that they were in continuous compliance during the relevant period covered by their compliance certification.

Mr. Tomko quoted from the June 27, 2003 EPA rule preamble: "We believe that the determination of the compliance status made by the responsible official, for the purpose of the compliance certification, is simply an evaluation of whether or not the source is, at the time of the certification, and was, during the covered period, in compliance with those permit terms and conditions that establish practically enforceable obligations on the part of the source. Absent evidence to the contrary, the responsible official for a source that is in compliance according to the monitoring results in the permit may certify 'continuous' compliance, provided that the responsible official did not fail to monitor, or report, or collect the minimum data required by the permit; if there were any deviations, these should have been excused by the permit. If any possible exceptions to compliance occurred, the permit would have provided for additional action that shows the underlying requirement was not violated."

Mr. Tomko further stated that there is a provision in the law that excuses occurrences from compliance from being deemed a violation. It lines up perfectly with Utah's avoidable breakdown rule and general provisions of Utah's Title V permit, which in fact includes a reference and a condition in the permit general provisions. Utah law states that a source that does have an unavoidable breakdown is not disqualified from certifying that it was in continuous compliance.

Jim Horrocks asked if a source could provide the clarifying information that was necessary so they are not misleading in their certification. Mr. Tomko replied that a company could supplement and provide additional information. The concern comes from filling out the form. It has two columns: "In Compliance" or "Out Of Compliance". Non-compliance could be footnoted and annotated with additional information, but the implications could result in enforcement action. Sources would rather certify "In Compliance".

Mr. Veranth asked if there is an extra violation created when the form is filled out because of the interpretation. Is it clear in black and white what the rule says so the source can check the "In compliance" box correctly?

Mr. Grover then asked what you are certifying to if you don't have a permit violation that is being disclosed or are you going deeper than that. Are we looking at the underlying requirements or permit terms themselves for what the source of an avoidable breakdown is called--a limit typically that has been exceeded from the permit, or a permit term that was exceeded? Mr. Andrus replied that right now the Division feels it is continuous or intermittent compliance with the permit terms and conditions. The next line after the EPA preamble states: "Any failure to meet the permit terms or conditions during a period when the permit required compliance would mean that compliance was not continuous." A deviation has occurred from the permit term itself. A deviation does not equate to a violation.

Mr. Grover asked if the permit itself contained language referencing the breakdown language. Mr. Andrus stated that a permit deviation, termed as an unavoidable breakdown, requires the source to file paper work under the unavoidable breakdown rule to make sure we have all the information required. Mr. Grover inquired if it is incorporated somewhere in the permit, and that if it is an unavoidable breakdown, then is that a permit violation. Mr. Andrus replied that it might not be a permit violation; it may be a permit deviation at the time.

Mr. Grover inquired if sources are certifying to deviation, or certifying to compliance with the permit. Mr. Andrus stated that in the EPA Preamble there are no deviations. He then quoted, "the responsible official must identify the permit deviation or possible exception to compliance or that term or condition was intermittent." If there is a deviation, then the source can certify intermittent compliance with the explanatory language that there is no violation because it was an unavoidable breakdown. Mr. Grover stated that a source is making a declaration when they have violated their permit when they mark the box and have to submit all the explanations as to why they did. They are thinking: "I don't think we have violated our permit because it was an unavoidable breakdown." They just want to mark that box because they think they are in compliance and are certified to that.

Mr. Andrus brought up that there is a third option while we work out these interpretive issues. EPA has allowed the possibility of using 'undetermined' instead of continuous or intermittent. Because we are still reviewing the issue itself, and if we have a situation where it is up in the air as to how to mark it, sources could still mark it as "In Compliance." Mr. Tomko stated that his preference is not to strike a middle ground because it is important enough issue that is deserves to be resolved now. We are basically in agreement in terms that if it is an unavoidable breakdown, if it is reported, and if it qualifies in the executive secretary's judgment, then it is not a violation. There are uncertainties that give rise to some of the issues that are the subject to this administrative process.

Jon Cherry commented that any time you are operating a facility, you need to know what the rules are and to know whether you are in compliance or what exactly you have to do. He then asked that with all the interpretive issues, would it be worth going back and take a look at the rules or how they are written to tighten up the interpretive piece? Mr. Veranth said he received a phone call from Mr. Ernie Wessman who shared the same concerns that the rules need to be clear and enforceable. In another case, the court stated that if we wanted to have unavoidable breakdowns included, we need to put those exact words in the language and not buried in a stack of interpretative language.

Fred Nelson, Assistant Attorney General, stated that an underlying problem is identifying the language of the preamble. How the state of Utah deals with unavoidable breakdowns versus EPA is different and that is reflected in the preamble. Staff is in the process of coming to the Board with a revision to the unavoidable breakdown rule to be consistent with what the EPA is asking on the Federal level. In respect to certification, it can be resolved without dealing on the issue of unavoidable breakdown and without taking a look at our state and federal rule to come to some kind of a consensus on what that should be. The federal government treats unavoidable breakdowns as a violation, unless by administrative discretion you are relieved of the penalty or you assert an affirmative defense for that issue. So you come in and demonstrate with your affirmative defense that you shouldn't be penalized for this violation. Under Utah rule, if you have an unavoidable breakdown under certain criteria, it isn't a violation. The preamble language is where the conflict is created.

Mr. Nelson continued that if you need to establish the way it should be done, it should be done by rule and not by a policy statement in the minutes of the Board that everybody understands that it is there. Otherwise, somebody is going to forget that that exists and the rulemaking act in Utah requires that you should do it that way. You are trying to take the federal language and move it

into the state rule and comply with the federal requirements. On the other hand, bringing that in creates the confusion that the preamble creates.

In answer to a question of a time limit for promulgating this rule, Mr. Andrus stated that under the approval process we have twelve months from when EPA promulgates a change, to when the change must be incorporated. We have until May 28 to have that incorporated into the rules.

Dianne Nielson thought that it seems to be that despite the uncertainties that there is some agreement that the unavoidable breakdown should not constitute a lack of continuous compliance for purposes of certification. What the Board could do, if there is concern in meeting this time frame, would be to adopt an emergency rule that would have an additional statement that an unavoidable breakdown does not constitute noncompliance relative to continuous compliance. We could insert a sentence on an emergency basis that would resolve the issue if we have to meet the EPA deadline. Then when we do an emergency rulemaking, we have a period of time that we have to follow with the normal rulemaking procedures. That would give us time to get the language right.

Rick Sprott stated that as a practical matter the one-year deadline is not critical and that it might be prudent to hold off and try to regroup. EPA probably would not take away our delegation if we are 60 days late. Regg Olson responded that this should not be a problem since EPA has approved our Title V program as written. If we do make a change that requires EPA to re-approve our program, we still have a viable program. An extra 30-60 days would not jeopardize our program. Mr. Horrock's asked if there was a process in place to request a time extension with EPA or are we just going to be 60 days late or let them know why. Mr Sprott responded that the Board could let EPA know what the circumstances are. It would be prudent to take more time to not create an automatic disconnect as opposed to a true up. The excess emissions rule will take some work and won't be done in the next 30-60 days. Mr. Nelson commented that a stakerholder group had been working on the excess emissions rule for the last 6 months and was close to completing a proposal for the Board. Dianne Nielson asked if failing to meet that EPA deadline, are we exposing the industry in the state of Utah to additional risk of lawsuit? Mr. Nelson said that EPA had to issue a Notice of Deficiency.

Mr. Andrus noted that if you take longer than 120 days on the proposed rule, the process will have to start over again. The first notice went out on February 11 and to public comment March 1. So it should be completed in July.

Mr. Veranth suggested that there are two options. One, table this and let the stakeholders hammer out better words so it is specific and the interpretations are explicit. The other choice would be to have an emergency rule that will be effective for 120 days so we could adopt the current ruling as an emergency rule, so that we are in compliance with the Federal rule, and then revisit it. Fred Nelson responded that the Board could adopt what is before them today as a final rule and ask the to staff to come up with clarifying language that could be added to the rule. Ms. Nielson asked if the proposed rule before us today is better than what we have now in existence? We need to operate under one or the other until the language is worked out. Regg Olsen replied that the existing rule now written is contrary to Federal language.

Mayor Seghini suggested that the Board table this and have a meeting prior to July 20. After the language is hammered out to meet our needs in dealing with EPA, and dealing with industry,

have an extra meeting in July and not ask for an extension. Mr. Tomko stated that the language being proposed is not objectionable to UEIC. There are the interruptive issues. Everybody could be well served by additional clarifying language to clarify questions like: what does it mean to certify continuous compliance or if you have a deviation, the circumstances where there are excess emissions, and those are deviations but not violations, and if you have a deviation, does that preclude you from certifying continuous compliance? One way to address that is to define what continuous compliance is. Mr. Veranth expressed concern that if this wasn't approved between now and the July 28, would we have to go through another public hearing process. Do we want to adopt what we have in front of us as a final rule? Do I really hear any one wanting to adopt it as it is?

Ms. Nielson asked the staff that given there are concerns with the interpretation of what constitutes continuous compliance and the need to define it. Would we be better off with this existing rule until we get that additional language figured out and adopted or should we adopt this rule today, realizing there is a question of interpretation? Would we be better off with this rule and then an amendment that could be done, either by emergency or through the normal rule amendment process that would clarify what constitutes continuous compliance? Would we be better off with this rule with a question of interpretation versus the rule that is in existence? Mr. Olsen responded that the staff is in favor of adopting the new language to be in compliance with the federal language. Ms. Neilson suggested another way to handle it would be to adopt the rule and have staff bring us language either as an amendment to the rule, or as an emergency amendment to the rule on or before July 7 Board meeting.

Mr. Grover asked what is the effective date of rule? Ms. Nielson said that if we adopt this rule today it would be effective pretty close to EPA's requirement of June 20.

Mr. Tomko mentioned one more item. There is language that has been proposed to be deleted in this rulemaking from certification requirements. The one sentence that states in R307-415-6c(5)(c)(ii), "If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the act which prohibits knowingly making a false certification or emitting material information." He was surprised when he saw this had been stricken since he knew that EPA had gone to long lengths to put it in. There had been no EPA explanation as to why they had dropped the language. Mr. Tomko called EPA's contact person and it had been dropped by mistake. A source, owner, or operator must indeed take into consideration other material information. It can't ignore other material information in making certification, referenced information, "information beyond what's required by the permit." Deleting that sends an incorrect signal to the regulated community that they no longer have to consider other material information. Mr. Andrus then commented that staff has had no official word from EPA that they are going to reverse that in the Federal Register or in the CFR. We do still have a requirement in the rules that they submit such other facts as the executive secretary may require to determine compliance status. They are also bound by the credible evidence rules to provide information to be presented. If EPA comes back that they are reinstating that, we would then reinstate it also. Mr. Veranth commented that he had contacted the same EPA representative and that person confirmed that there was a mistake in the Federal Register printing version and they were 2-3 months from publishing it in the Federal Register reinstating it. Mr. Nelson stated that in respect to that issue, the Board could put the sentence the back in and approve it.

MOTION Dianne Nielson moved that the Board adopt the rule R307-415-6c(5) (c) (ii), with the change that the Board would not delete the sentence currently deleted, "If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification omitting material information." The Board would also direct the staff to bring back to the Board on or before the July 7 Board meeting a change or an addition to the rule that would clarify continuous compliance with respect to unavoidable breakdowns and that it would be the Board's intent to take action, emergency action if necessary, at that meeting to further revise the rule regarding continuous compliance. Motion was seconded by Joann Seghini and approved by the Board.

V. Final Adoption: Revisions in R307-110-28 and Section XX, The State Implementation Plan for Regional Haze. Presenter: Dave McNeill

In February the Board proposed for public comment amendments to the Regional Haze SIP. A public hearing was held on March 24 with only one person attending the hearing. No written comments were received.

Staff requests that the Board adopt this rule and the revisions to the Regional Haze SIP so it could be submitted to EPA. This is a rule that was originally proposed with the first Regional Haze SIP. This proposed action would be incorporating something that has been out for hearing twice, both times with no comment.

MOTION Joann Seghini moved that the Board adopt rule 307-110-28 and Section XX Regional Haze SIP as proposed. Richard Olson, seconded and the Board approved.

VI. Five Year Reviews: R307-215, R307-309, R307-343 and R307-420. Presenter: Fred Nelson

Mr. Nelson explained that this was the first time the Board had had an opportunity to go through this process of approval. Under the rulemaking act of 1992, the Legislature established a provision that each agency reviews each of its rules within 5 years of the rule's original effective date. An agency is defined as the entity that has authority to issue those rules; in this case, the Air Quality Board, by statute is the rulemaking authority for the State. Previously, the reviews were submitted by the DAQ staff to the Division of Administrative Rules (DAR) for filing, but it was recently pointed out that the Board should be looking at them. There are several rules that will expire within the next little while. The statute says the agency is to review the rules and file a notice of review. The notice of review indicates that the statutory authority still exists, that the rule should continue in effect, and the that Board declares to that effect. The Board has the option to amend the rules at any time and also repeal the rule. The matter before you is to approve the submission to DAR of these notices of review of the rules.

Jan Miller has reviewed the following rules

- R307-215. Emission Standards: Acid Rain Requirements;

- R307-309. Davis, Salt Lake and Utah Counties, Ogden City and Any Nonattainment Areas for PM10: Fugitive Emissions and Fugitive Dust;
- R307-343. Davis and Salt Lake Counties and Ozone Nonattainment Areas: Emission Standards for Wood Furniture Manufacturing Operation; and
- R307-420. Permits: Ozone Offset Requirements in Davis and Salt Lake Counties.

The Board's packet contains a copy of the DAR form, the Board's approval authorizes staff to send the rules to DAR so the rules can continue in effect.

This gives DAR notice to publish their review. Upon reading this, the public can come to the Board and petition that the rule be changed, but the 5-year review does not formally initiate a public comment period. The Board can open the rules to go through an amendment process if needed.

Mr. Grover was concerned about Utah County's PM10 SIP regulating 150 vehicle trips per day on unpaved roads versus paved roads. Mr. McNeill explained that when adopting the SIP, the entire county was designated as a non-attainment area so Reasonably Available Control Technology (RACT) had to apply to the entire county. Staff is involved in the development of a maintenance plan that will include Utah and Salt Lake County. This plan has to be approved by EPA since it is part of the SIP. Staff could address Utah County's concerns at that time.

MOTION Richard Olsen moved to approve the 5-year reviews with a second by Jon Cherry. The motion passed.

VII. Information Items:

A. Next Work Session. Presenter: Rick Sprott

The Board was asked for ideas they would like to include for work sessions, orientations at lunch or some other activity. It was suggested a visit to the tailings pond and re-vegetation project in conjunction with future meetings.

B. Public Hearings: Presenter: Rick Sprott

None were scheduled at this time. Staff had a successful technical meeting in Cache Valley with EPA authorities, county officials, the local health department and Utah State University last month. The group focused on defining technical problems. In the future, as we approach the fall and the next PM2.5 season, we will advise the Board of those activities.

C. SIPS. Presenter: Dave McNeill

Staff submitted the CO SIP for Utah County including a re-designation request to EPA. Jan Miller is in the process of getting the final documentation from the DAR so we can submit that to EPA and EPA can deem it to be a complete package. That is when they will begin the official review and approval process. Refineries have submitted letters to EPA requesting enforcement discretion concerning oxygenated fuels, and when the

package is administratively complete, EPA will be able to act on those letters. To deem a package to be "administratively complete," we have to publish the final rule in the *State Bulletin* stating that the rule is effective, and verification that it has been published and is in effect has to be submitted to EPA.

PM10 Maintenance Plan: We are doing some refined modeling and some sensitivity analysis to find out what is going on in the model and try to figure out what we are going to need to do. At the next Board meeting we will have a complete update on these SIPs.

SO2: A few years ago we did a re-designation request. EPA came back with comments and requested we do modeling with refineries. As a result, Tesoro set up a monitor and a SODAR on site to try to characterize the meteorology around the refinery. This has been going on for a year. The data collection is done and the modeling is almost finished. In August or September, we will bring to the Board a revised SO2 plan that we believe will be ready to submit back to EPA for approval.

CO Maintenance Plans for Salt Lake City and Ogden: Because of EPA's new mobile model, MOBILE6, the MPO's need new emission budgets. We are looking at revising the CO Maintenance Plans for Salt Lake City and Ogden to incorporate MOBILE6 for the MPO so they can show conformity with those Plans.

Mr. McNeill reminded the members of the Board about a short-, medium-, and long–term table of SIP development projects, and said that he would provide the Board with an updated version of that table at the next meeting of the Board.

D. Monitoring. Presenter: Bob Dalley

Choose Clean Air/No Drive Day Season begins June 1 and continues until Sept 30, 2004. Graphs for May showed the highest value for ozone in 1 hour and 8 hour values during the month. PM10 for April and May for Hawthorne, Lindon and Ogden stations were provided. April and May PM 2.5 filters at Hawthorne, Lindon and Ogden were also presented. May 10th reflected extremely high winds for Salt Lake Valley.

E. HAPS Compliance: No questions.

F. Compliance: No questions.

Meeting adjourned 2:50 pm.